

# EDITORIAL ANALYSIS → 12 JANUARY 2023 → THE INDIAN EXPRESS:

## DELEGATED LEGISLATION:

- **Present circumstances:**

- The Supreme Court had to decide whether Parliament had given the Center undue authority under the law to demonetize cash in order to sustain the Centre's 2016 decision.
- Despite the majority ruling supporting the validity of the delegated statute, the minority judgement declared that excessive delegation of power is arbitrary.

- **What exactly is delegated law?**

- Parliament frequently delegated certain responsibilities to governmental organisations because lawmakers were unable to deal with every subject personally.
- This delegation of authority is mentioned in statutes, also referred to as delegated legislations.
- The delegated legislation would include operational details and give those carrying them out authority.
- The regulations and bylaws made under laws are the most well-known type of delegated legislation.

- **The concept is as follows, according a 1973 Supreme Court ruling:**

- "The custom of giving the Executive the power to create subsidiary legislation in a specific area has evolved from the practical needs of a modern welfare State.
- At the same time, it's critical to remember that the creators of our Constitution granted the power to enact laws to the representatives of the people, giving them the ability to use that power both directly and indirectly through those representatives.

- The restriction on excessive transfers of legislative power is a crucial element of the people's sovereignty.
- **In the event of the demonetisation, what kind of authority was transferred?**
- In essence, Section 26(2) of the Reserve Bank of India Act, 1934 gives the Center the power to declare a certain currency denomination no longer legal tender.
- A series of bank notes of any denomination may stop being legal tender with effect from the date specified in the notice, the provision states, "On the recommendation of the Central Board, the Central Government may notify in the Indian Gazette."
- By approving the RBI Act, Parliament effectively granted the federal government the power to alter the definition of what is considered legal tender. Does herself(guycaliupper?) — maşin? "man soll or? tension is|lorrien? Any length of time can guard? (part is + mic) While preparing Sistemulcite for herself
- **Why was this a problem?**
- Does Section 26(2) violate the Constitution by giving too much legislative authority to the executive branch if it is ruled that it permits demonetization? The fundamental issue raised by the petitioner was this.
- In accordance with the Constitution, the Parliament has the power to pass legislation. Statutory organisations may be given operational authority, but not governing authority. A significant amount of instructions on how to exercise the power must also be included in the delegation.
- **However, it's best to avoid giving away too much authority:**
- In a famous ruling from 1959, Hamdard Dawakhana v. Union of India, the Supreme Court struck down delegation of power on the grounds that it was vague.
- The legitimacy of many provisions of the Drug and Magic Remedies (Objectionable Advertisements) Act that dealt with the powers of search, seizure, and entrance as well as the ban on specific drug advertisements for the treatment of specific conditions were questioned by a Constitution Bench.

- The Court determined that Section 3 (delegation provision)'s allowing the federal government to designate particular illnesses and conditions is "uncontrolled," "uncanalized," and exceeds the bounds of a valid delegation. Consequently, it was ruled that the same was unconstitutional.
- Throughout the decision, the court applies the "policy and guideline" test to decide if the delegated legislation is constitutional.
- According to the Indian Attorney General, the RBI Act itself contains recommendations on the use of delegated powers. He referred to the Act's Preamble and Section 3 to describe its purpose and the Center's duty to "manage" monetary policy.

- **Which decision did the Court reach?**

- The majority view holds that because the Center is receiving the power delegation and already answers to the Parliament, the power delegation cannot be cancelled.
- According to the statement, "If the Executive does not act reasonably while exercising its power of delegated legislation, it is accountable to Parliament who are elected representatives of the citizens for whom there is a democratic method of bringing to book the elected representatives who act unreasonably in such matters."
- The opposing viewpoint, however, did not concur with this viewpoint. Justice BV Nagarathna first ruled that the Center was unable to use its delegated powers because the RBI's Section 26(2) only gives the Center jurisdiction when the recommendation is "initiated" by the RBI Central Board.